


JUN 03 2011

JULIA C. DUFFLEY, CLERK
BY: 
DEPUTY CLERKIN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

COMPLAINT UNDER CIVIL RIGHTS ACT 42 U.S.C. § 1983

Action Number 7:11CV00257
(To be supplied by the Clerk, U.S. District
Court)

Please fill out this complaint form completely. The court needs the information requested in order to assure that your complaint is processed as quickly as possible and that all your claims are addressed. Please print/write legibly or type.

I. PARTIES

A. Plaintiff:

1. a. Ophelia De'Lonta b. 1014174
(name) (inmate number)

c. Buckingham Corr. Ctr.
(address)

P.O. Box 430, Dillwyn, Va. 23936

Plaintiff MUST keep the Clerk of Court notified of any change of address due to transfer or release. If plaintiff fails to keep the Clerk informed of such changes, this action may be dismissed.

B. Defendant(s):

Plaintiff is advised that only persons acting under color of state law are proper defendants under section 1983. The Commonwealth of Virginia is immune under the Eleventh Amendment. Private parties such as attorneys and other inmates may not be sued under section 1983. In addition, liability under section 1983 requires personal action by the defendant that caused you harm. Normally, the Director of the Department of Corrections, wardens and sheriffs are not liable under section 1983 just because they supervise persons who may have violated your rights. These persons are liable only if they were personally involved in the alleged deprivation. In addition, prisons, jails, and departments within an institution are not persons under section 1983.

1. a. See Attachment b. _____
(name) (title/job description)
- c. _____
(address)
2. a. _____ b. _____
(name) (title/job description)
- c. _____
(address)
3. a. _____ b. _____
(name) (title/job description)
- c. _____
(address)

If there are additional defendants, please list them on a separate sheet of paper. Provide all identifying information for each defendant named.

Plaintiff MUST provide an address for defendant(s) in order for the court to serve the complaint. If the plaintiff does not provide an address for a defendant, that person may be dismissed as a party to this action.

In addition, plaintiff MUST provide a copy of the completed complaint and any attachments for EACH defendant named.

II. PREVIOUS LAWSUITS

A. Have you ever begun other lawsuits in any state or federal court relating to your imprisonment? Yes [☒] No [☐]

B. If your answer to A is YES: You must describe any lawsuit, whether currently pending or closed, in the space below. [If there is more than one lawsuit, you must describe each lawsuit on another sheet of paper, using the same outline, and attach hereto.]

1. Parties to previous lawsuit:

Plaintiff(s) Ophelia De'Lonta

Defendant(s) Ronald Angelone, et al (1999)
Gene Johnson, et al (2005) & 2010

2. Court [if federal court, name the district; if state court, name the county]: Eastern District

3. Date lawsuit filed: 1999 & 2005 & 2010 respectfully

4. Docket number: 1999 - (unk) - cite: 330 F.3d 630
2005 - Action No. 1:07cv245; 2010 - Action No. 1:09cv1167
1:10cv838 (TSE) JFA)

5. Name of Judge to whom case was assigned:

1999 case was assigned to Judge Turk --2005 case assigned to
Judge Buchanan - 2010 1:09cv1167 assigned to Judge Ellis

6. Disposition [Was case dismissed? Appealed? Is it still pending? What relief was granted, if any?]:

all cases reached settlement, 1:10cv838(TSE) JFA) was dismissed.
1:09cv1167 is still pending

III. GRIEVANCE PROCEDURE

A. At what institution did the events concerning your current complaint take place? 2

Buckingham Corr. Ctr., Powhatan

B. Does the institution listed in A have a grievance procedure? Yes ☒ No ☐

C. If your answer to B is YES:

1. Did you file a grievance based on this complaint? Yes ☒ No ☐

2. If so, where and when: Buckingham Corr. Ctr.

3. What was the result? expired filing period, and repetitive

4. Did you appeal? Yes ☒ No ☐

5. Result of appeal: upheld
see exhibit D - D1

D. If there was no prison grievance procedure in the institution, did you complain to the prison authorities? Yes ☐ No ☐

If your answer is YES: What steps did you take?

E. If your answer is NO, explain why you did not submit your complaint to the prison authorities.

IV. STATEMENT OF CLAIM:

[State here as briefly as possible the facts of your case. Describe how each defendant is involved and how you were harmed by their actions. Also include the names of any other persons involved, dates and places of events. You may cite constitutional amendments you allege were violated, but do not give any legal arguments or cite any cases or statutes.]

If you intend to allege several related claims, number and set forth each claim in a separate paragraph. (Attach additional sheets if necessary.)]

See Attachment

V. RELIEF

I understand that in a section 1983 action, the Court cannot change my sentence, release me from custody or restore good time. I understand I should file a petition for a writ of habeas corpus if I desire this type of relief. OD [please initial]

The plaintiff wants the Court to: [check the remedies you seek]

_____ award money damages in the amount of \$ See attachment
 _____ grant injunctive relief by _____
 _____ Other _____

VI. PLACES OF INCARCERATION

Please list the institutions at which you were incarcerated during the last six months. If you were transferred during this period, list the date(s) of transfer. Provide an address for each institution.

Buckingham Correctional Center
P.O. Box 430
Dillwyn Virginia 23936

VII. CONSENT

CONSENT TO TRIAL BY A MAGISTRATE JUDGE: The parties are advised of their right, pursuant to 28 U.S.C. § 636(c), to have a U.S. Magistrate Judge preside over a trial, with appeal to the U.S. Court of Appeals for the Fourth Circuit.

Do you consent to proceed before a U.S. Magistrate Judge: Yes ☒ No ☐. You may consent at any time; however, an early consent is encouraged.

VIII. SIGNATURE

If there is more than one plaintiff, each plaintiff must sign for himself or herself.

Signed this 31 day of MAY 2011
 Plaintiff Opheia L. Smith

IN FORMA PAUPERIS AFFIDAVIT

I hereby apply for leave to proceed with this complaint without prepayment of fees or costs or giving security therefore. In support of my application, I state under oath that the following facts are true:

1. I am the plaintiff in this complaint, and I believe that I am entitled to redress.
2. I am unable to prepay the costs of said action or give security therefore, because:
N/A
3. I have no assets or funds which could be used to prepay the loan or costs except:
N/A

(Write "none" above if you have nothing; otherwise, list your assets)

Philip D. Tink
Signature of Plaintiff

"I declare under penalty of perjury that the foregoing is true and correct."

Executed on this 31 day of May, 2011

Philip D. Tink
Signature of Plaintiff

IT IS NO LONGER NECESSARY TO HAVE YOUR PETITION NOTARIZED.

CERTIFICATE

I hereby certify that the petitioner herein has the sum of \$ _____ on account too his credit at the penal institution where he is confined. I further certify that the petitioner, likewise has the following sureties to his credit according to the records of said penal institution.

Authorized Officer of Penal
Institution